

## **REMARKS**

Claims 1-8 remain in the application. Claims 1-17 and 19-29 stand rejected. Claim 1 has been amended.

Applicant believes the amendments don't add new matter. The amendment in regards to using the reciprocal of the odds is supported with respect to paragraph 83 of US pub no. 20040152511 where it is presented as an alternative embodiment to changing the contribution percentage to the jackpot. The example in the paragraph is that system A has a \$2 dollar wager amount and a 1 in 10 million chance of winning the progressive. System B has a 50 cent wager amount and thus the odds of winning the progressive in System B may be adjusted to 1/4 that of system A or 1 in 40 million. This is equivalent to

$$(Wager_A)/(Odds\ of\ Winning_A)=(Wager_B)/(Odds\ of\ Winning_B)$$

$$Odds\ of\ Winning_B=Wager_B/Wager_A\ (Odds\ of\ Winning_A)$$

$$= \$0.5/\$2\ (Odds\ of\ Winning_A)=.25\ (Odds\ of\ Winning_A)=1\ in\ 40\ million$$

The example provided is consistent with the above formula, which is consistent with the claims as amended.

### ***Rejections under 35 U.S.C. § 112 and Objections***

Applicant believes claims as amended overcome 112 rejections and claim objection.

### ***Rejections under 35 U.S.C. § 103***

The office communication recites,

7. Claims 1-3, 6-12, 14, 19-20, and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tracy; Daniel A. (US 5116055 A).

Applicant believes Tracy can't be said to render obvious the claims as amended because the hit frequency described in Tracy is a constant for each machine and is not adjusted. Further, Office Communication recites,

each wager based on a random number and notify the progressive controller). Tracy does not explicitly disclose that the progressive management device controls the generation of numbers to determine winners of the progressive or that a new jackpot percentage is determined. However, it would have been an obvious modification to one of ordinary skill in the art at the time of invention that the outcome generation of the local game machines could have been controlled by the central progressive controller in order to centralize the game functions, reduce the complexity of the local devices, and thereby reduce the maintenance needs and expenses as evidenced by Itkis; Boris (US

The existent of centralized functions, such as evidenced by Itkis, is not a rationale for a modification as required by the MPEP. Itkis or Tracy doesn't provide any evidence that centralizing functions would reduce maintenance costs or expenses associated with the modifications proposed to the system of Tracy. This analysis is not clear cut. Itkis describes a system where an operator must be present at all times. Further, centralization requires a more complex and reliable network infrastructure. These requirements may make Itkis' system more expensive than Tracy. Without evidence to the contrary, Applicant asks how the statements in the Office Communication can be construed other than as "conclusory" statements.

Therefore, Applicant believes these statements fail to provide a rationale to make the proposed modification. None of the exemplary rationales of MPEP 2143 are provided, no Graham factors are analyzed, no teaching, suggestion, or motivation is provided, and no other adequate rationale is stated. It is submitted that a reference to "an obvious modification" based upon an unsupported rationale does not satisfy the requirements of a rejection under 35 USC 103 and may be considered a conclusory statement. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR International Co. v. Teleflex Inc.*, 127 S. Ct 1727 citing *In re Kahn*, 441 F. 3d 977, 998. Because no articulated reasoning has been provided showing why one of ordinary skill would make such a modification, no prima facie case of obviousness is stated.

Applicant believes that all pending claims are allowable and respectfully requests a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

Respectfully submitted,  
WEAVER AUSTIN VILLENEUVE & SAMPSON LLP

/David P. Olynick/  
David P. Olynick  
Reg. No. 48,615

WEAVER AUSTIN VILLENEUVE & SAMPSON LLP  
P.O. Box 70250  
Oakland, CA 94612-0250  
(510) 663-1100